



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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MEMORANDUM

DATE: November 8, 2017

TO: Family Division Judges
District Court Judges
District Court Magistrates
Family Division Administrators
Circuit Court Administrators
District Court Administrators

FROM: Noah A. Bradow, Court Analyst Manager

RE: Minor in Possession Legislation and Review of Civil Infraction Agreements
between Circuit Court-Family Division and the District Court

Effective January 1, 2018,¹ MCL 436.1703(1)(a) provides that the first violation of minor in possession is a state civil infraction, if the minor does not have a prior judgment.² Subsequent violations are still misdemeanors.

District Court Procedure

Pursuant to the new statute, courts will need to process MIP cases differently based on whether the MIP is the defendant's first or subsequent offense. MCL 436.1703(1) provides that "[a] minor may be found responsible or admit responsibility only once under this subdivision." Courts have expressed some concerns regarding whose responsibility it is to determine whether the offense should be a first offense processed as a state civil infraction or a second offense processed as a misdemeanor minor in possession. The statute is silent as to whose responsibility it is.

¹ See [Public Act 357 of 2016](#), [Public Act 123 of 2017](#)

² MCL 436.1703(18)(d) defines "prior judgment" to include offenses other than minor in possession. These offenses include violations of MCL 436.1701, 436.1707, 257.624a, 257.624b, 257.625, 324.80176, 324.81134, 324.82127, 750.167a, and 750.237.

The courts have a couple of options when a ticket is received. The determination of how a court will process these cases is a matter of judicial discretion dependent on how the court chooses to interpret the statute with respect to its responsibilities.

Option 1 - The court can process the ticket as written³ by law enforcement. Some courts will not want to be a part of the “charging decision,” and will leave this responsibility to law enforcement or the prosecutor’s office. If law enforcement indicates that it is a state civil infraction, the court accepts that it is a first offense and processes it as a state civil infraction. If the court chooses this option, it should work with law enforcement to set the expectation that the tickets will indicate whether this is a state civil infraction or misdemeanor offense. The drawback of this option is that if law enforcement fails to determine, or incorrectly determines, the number of prior MIP judgments the defendant has received, the defendant does not receive the appropriate due process rights for the violation.⁴

Option 2 - The court can take affirmative steps to determine whether there has been a prior judgment as defined by MCL 436.1703(18) and whether the defendant would be eligible for an admission of responsibility to a state civil infraction. Some courts want to ensure that they are not accepting an admission of responsibility on a second offense because “a minor may be found responsible or admit responsibility only *once* under this subdivision.” Under this option, the court will determine if the defendant’s offense is a first or subsequent offense. This option requires court staff to review the defendant’s driving record and determine whether any prior judgments exists that would make the person ineligible to admit responsibility to a state civil infraction. This may require additional clerk training.

Juveniles

Generally, the family division of the circuit court has exclusive jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile who is alleged to have violated any municipal ordinance or law of the state or United States.⁵ However, the family division of the circuit court and the district court may enter an agreement via local administrative order (LAO) under [MCL 712A.2e](#), allowing the district court to process civil infractions alleged to have been committed by a juvenile. Courts may use the [SCAO Model LAO 12](#) when developing civil infraction agreements.

If your court is a part of an existing agreement under [MCL 712A.2e](#), we recommend that your agreement be reviewed to determine if violations of MCL 436.1703(1)(a) should be handled by the family division of the circuit court or by the district court. The agreement should be reviewed and discussed by the respective court administrators and chief judge(s), and any others

³ If, for example, the defendant had a prior MIP judgment and the offense should have been a misdemeanor offense, the ticket will be processed as it is written, and it will be up to the prosecutor or defendant to appeal any decision. See MCR 4.101(H).

⁴ If the ticket says it is a first, the defendant has the rights associated with a state civil infraction. However, if the ticket was actually for a subsequent violation, the defendant should have been given the rights associated with a misdemeanor. Additionally, under MCL 436.1703(3), if an individual has plead guilty to a misdemeanor violation, the court, without entering judgment of guilt, *may* defer further proceedings and place the individual on probation.

⁵ [MCL 712A.2\(a\)\(1\)](#).

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the court deems appropriate. We further recommend that any changes to your court's civil infraction agreement be communicated to law enforcement and the prosecuting attorney's office to ensure petitions are filed in the appropriate court..

If the family division of the circuit court will be handling petitions filed under MCL 436.1703(1)(a), the filing should be recorded as a DL case type code. MCR 8.117(A)(7).

The MiCOURT District Court System (DCS) of Judicial Information Services (JIS) is currently developing program changes to meet the requirements of the new law. DCS courts can expect further communication in the coming months regarding these changes. Program changes are not required in the MiCOURT Probate Court System (PCS) and MiCOURT Trial Court System (TCS) applications.

Please contact trialcourtservices@courts.mi.gov with any questions.